



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** The bill creates a first degree misdemeanor if a surveyor or mapper who is legally authorized to enter private property damages a fence on agricultural lands. The bill also creates a third degree felony if the fence that was damaged was used to contain livestock.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 810.115, F.S. prohibits a person from willfully and maliciously breaking down, marring, injuring, defacing, cutting, or creating an opening, gap, interruption, or break in a fence that encloses land that does not belong to the person. A person commits a first degree misdemeanor<sup>1</sup> for a first violation of this section, and a third degree felony<sup>2</sup> for second or subsequent violations. Section 810.115, F.S. also provides that a person commits a third degree felony if the damaged fence was used to contain animals. Additionally, s. 810.115, F.S. provides the court may require full compensation to the owner of the fence for all direct and indirect damages caused by a violation of this Section.

Surveyors and mappers are responsible for measuring and mapping the Earth's surface. Surveyors establish land, airspace, and water boundaries; write land descriptions for deeds and other legal documents; and measure the elevation and topography of the Earth's surface.<sup>3</sup> Mappers collect and analyze information from surveys and record the geographic information on a map.<sup>4</sup> Surveyors and mappers are regulated by the Department of Business and Professional Regulation ("Department") and the Board of Professional Surveyors and Mappers ("Board").<sup>5</sup> The Board certifies a surveyor or mapper is qualified to be licensed by the Department, monitors continuing education requirements, and commences disciplinary proceedings.<sup>6</sup>

Section 472.029, F.S. provides authorization for surveyors, mappers, and their employees to enter onto private property for purposes related to making surveys and maps and that this entry does not constitute trespass. Additionally, s. 472.029, F.S. prohibits surveyors, mappers, and their employees from destroying, injuring, damaging, or moving physical improvements on private property without the consent of the landowner. However, there is no criminal penalty that results from a violation of this statute. If a surveyor or mapper damages physical improvements on private property, the disciplinary action is limited to a review by the Board of Professional Surveyors and Mappers, who may impose penalties such as fines, revocation or suspension of a surveying or mapping license, or a reprimand.<sup>7</sup> Surveyors and mappers who damage private property in violation of this section are liable to landowners for such damages through a civil cause of action.

##### Proposed Changes

CS/HB 789 amends s. 472.029, F.S. to create criminal penalties for surveyors and mappers authorized to enter private property under s. 472.029(1) who willfully and maliciously break down, mar, injure, deface, cut, or create an opening, gap, interruption, or break in a fence on agricultural lands<sup>8</sup>. The

<sup>1</sup> A first degree misdemeanor is punishable by up to 1 year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 472.005(3), F.S. See also <http://www.bls.gov/oco/ocos040.htm>

<sup>4</sup> Id.

<sup>5</sup> Section 472.007, F.S.

<sup>6</sup> Sections 472.013, 472.015, 472.017, 472.033, F.S.

<sup>7</sup> Section 472.033, F.S.

<sup>8</sup> This term is defined in accordance with s. 193.461, F.S.

criminal penalties are identical to those for all other persons who damage fences, currently outlined in s. 810.115, F.S. (see above). The bill provides that surveyors, mappers, or their employees commit a first degree misdemeanor for a first violation of the newly created offense, and a third degree felony for second or subsequent violations. The bill also provides that surveyors, mappers, or their employees commit a third degree felony if the damaged fence was used to contain livestock<sup>9</sup>. Additionally, the bill provides the court may require full compensation to the owner of the fence for all direct and indirect damages or losses caused by a violation of any of the newly created offenses.<sup>10</sup>

The third degree felonies created by this bill are not ranked in the Offense Severity Ranking Chart<sup>11</sup>. For sentencing purposes, an unranked third degree felony defaults to a Level 1 offense.<sup>12</sup>

The bill explicitly provides that the newly created criminal penalties shall not be construed to restrict or modify the rights of entry granted to surveyors and mappers in s. 472.029(1), F.S.

The bill has an effective date of October 1, 2008.

#### C. SECTION DIRECTORY:

Section 1 Amends s. 472.029, F.S., relating to the authorization of surveyors and mappers to enter private property.

Section 2 Provides an effective date of October 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>9</sup> Livestock is defined in accordance with s. 588.13(1), F.S. to mean all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.

<sup>10</sup> See s. 775.089, F.S.

<sup>11</sup> Section 921.0022, F.S.

<sup>12</sup> Section 921.0023, F.S.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference (CJIC) met on March 14, 2008 and determined this bill would have an insignificant prison bed impact.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 12, 2008, the Committee on Homeland Security & Public Safety adopted a strike-all amendment that amends the bill as follows:

- changes the intent requirement from "willfully" to "willfully and maliciously."
- changes the term "animals" to "livestock as defined in s. 588.13(1), F.S."
- provides that nothing in the bill shall limit the right of entry onto private property already granted to surveyors and mappers.

On April 9, 2008, the Safety & Security Council made the bill a council substitute.